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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,166	02/14/2000	Joseph A. Yaccarino III	X-9304	6169

7590 12/05/2001

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6665-A Old Dominion Drive  
McLean, VA 22101

EXAMINER
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PHAN, HIEU

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/05/2001

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/503,166	YACCARINO III ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Hieu Phan	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2001.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 13-28 and 33-37 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 and 29-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7</u> | 6) <input type="checkbox"/> Other: _____                                    |

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***Response to Election/Restriction***

1. Applicant's election with traverse of Specie 3 from Group I, represented by figures 10-12, and further elects Specie 4 of Group II, represented by figure 10, with claims 1-12 and 29-32 readable on the species is acknowledge.
2. Non- elected claims 13-28 and 33-37 are withdrawn from consideration.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Patent 6,258,125) in view of Reed (U.S. Patent 5,968,047).

Paul et al. teaches an intervertebral allograft spacer (50, 80) with portions (52, 54) having complimentary and interlocking mating surfaces (56, 58, 82, 84, 86) with plurality of angularly aligned holes (66) and pins (64) as is claimed (Abstract, figures 6-8B and 11, column 2 lines 13-43, column 3 lines 26-59, column 4 lines 27-67 and column 5 lines 1-7). Regarding 1-12 and 29-32, Paul et al. failed to disclose the fastener is threaded, a threaded bolt and nut, knurled rod or a demineralized rod.

Reed teaches different type of demineralized fixation devices such as a screw (80) or rod (90, 100) (Figures 20A and 21A-22, column 2 lines 18-67, column 3 lines 9-26, column 5 lines 28-67 and column 6 lines 1-14). The advantage of using the demineralized fixation devices is the

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demineralized devices help to prevent an immune system response by the patient. Further, the shape of the device help to better secures an implant.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Reed to modify the apparatus Paul et al. to have the fastener is threaded, a threaded bolt and nut, knurled rod or a demineralized rod. The motivations for incorporating the feature of reed into the apparatus of Paul et al. are the demineralized devices help to prevent an immune system response by the patient and the shape of the device help to better secure an implant.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is (703) 308-8969. The examiner can normally be reached on Mon.-Fri. from 8:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax number for this group is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceedings should be directed to the group receptionist whose telephone number is (703) 308-0858.

  
David H. Willse  
Primary Examiner

  
Hieu Phan